

IN THE CIRCUIT COURT OF THE
TWELFTH JUDICIAL CIRCUIT IN AND
FOR SARASOTA COUNTY, FLORIDA

CASE NO.:
DIVISION:

JACK KOWALSKI, individually and on
behalf of his children, MAYA
KOWALSKI, a minor, and KYLE
KOWALSKI, a minor; and as Personal
Representative of the Estate of BEATA
KOWALSKI, Deceased,

Plaintiffs,

v.

JOHNS HOPKINS ALL CHILDREN'S
HOSPITAL, INC., SUNCOAST
CENTER, INC., CATHERINE BEDY,
THE DEPARTMENT OF CHILDREN
AND FAMILIES AS THE CUSTODIAN
OF RECORDS, and SALLY M. SMITH,
M.D.

Defendants.

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COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, JACK KOWALSKI, individually and on behalf of his children, MAYA KOWALSKI, a minor, and KYLE KOWALSKI, a minor; and as Personal Representative of the Estate of BEATA KOWALSKI, by and through their undersigned attorneys, hereby sue Defendants, JOHNS HOPKINS ALL CHILDREN'S HOSPITAL, INC., SUNCOAST CENTER, INC., CATHERINE BEDY, THE DEPARTMENT OF CHILDREN AND FAMILIES AS THE CUSTODIAN OF RECORDS, and SALLY M. SMITH, M.D., and state:

PARTIES

1. Plaintiff, Maya Kowalski (“Maya”), a minor, at all times material hereto, was a resident of Venice, Sarasota County, Florida, and brings this action through her father and legal guardian, Jack Kowalski. At all times material hereto, Maya was the minor daughter of Beata Kowalski and Jack Kowalski, her mother and father. Further, at all times material hereto, Maya Kowalski was under the care and supervision of Johns Hopkins All Children’s Hospital, Inc., Suncoast Center, Inc., and Sally M. Smith, M.D.

2. Plaintiff, Kyle Kowalski (“Kyle”), a minor, at all times material hereto, was a resident of Venice, Sarasota County, Florida, and brings this action through his father and legal guardian, Jack Kowalski. At all times material hereto, Kyle was the minor son of Beata Kowalski and Jack Kowalski, his mother and father.

3. The Estate of Beata Kowalski is a party to this action as Beata Kowalski (“Beata”), the mother of Maya and Kyle and the wife of Jack Kowalski, died by suicide on January 8, 2017. At all times prior to her death, Beata was a resident of Venice, Sarasota County, Florida. Jack Kowalski, as the personal representative of the Estate of Beata Kowalski (the “Estate”), brings this action on behalf of Beata and her Estate.

4. Plaintiff Jack Kowalski (“Jack”), at all times material hereto, was a resident of Venice, Sarasota County, Florida, and was the father of Maya and Kyle and the husband of Beata, now deceased.

5. Defendant, Johns Hopkins All Children’s Hospital, Inc., (“JHACH”)¹, at all times material hereto, was and is a Florida not-for-profit corporation engaged in the

¹ Per the Stipulation attached as Exhibit A, Plaintiffs and Defendant, Johns Hopkins All Children’s Hospital, have agreed that Johns Hopkins accepts responsibility for the acts or omissions of all of its persons listed in Exhibit B (under seal). Further, Johns Hopkins has stipulated per Exhibit A that should further Johns Hopkins’ employees/contractors involved in the facts and circumstances surrounding the

business of providing medical health services with its primary place of business at 501 Sixth Avenue South, St. Petersburg, Florida 33701. At all times material hereto, JHACH was acting as a private entity under contract with the State of Florida and/or local municipalities, including the County of Sarasota. JHACH can be served in Florida through its registered agent Jackie Crain at 501 Sixth Avenue South, Legal, 6500002700, St. Petersburg, Florida 33701.

6. Defendant, Suncoast Center, Inc., (“Suncoast”) at all times material hereto, was a lead agency under contract with the Florida Department of Children and Families (“DCF”), with its principal place of business at 4024 Central Avenue, St. Petersburg, Florida 33711. Suncoast can be served in Florida through its registered agent, Barbara Daire at 4024 Central Avenue, St. Petersburg, Florida 33711.

7. Defendant, Sally M. Smith, M.D. (“Smith”), at all times material hereto, was a pediatric doctor employed by Suncoast and JHACH at various times, and was a resident of Pinellas County, Florida. Dr. Smith can be served in Florida at her residence at 1080 16th Avenue North, St. Petersburg, Florida 33704, or at her place of employment at Suncoast, 2960 Roosevelt Boulevard, Clearwater, Florida 33760

8. Defendant, Catherine Bedy, at all times material hereto, was a social worker employed by JHACH. Ms. Bedy can be served at her residence at 8 Pelican Place in Belleair, Florida 33756.

9. Defendant, Department of Children and Families (“DCF”) is named as a Defendant as the Custodian of Records pertinent to certain statutory claims made below. DCF can be served through the Office of the General Counsel, Florida Department of

present case be discovered throughout the course of the litigation, Johns Hopkins will accept legal responsibility for the additional parties discovered.

Children and Families, 1317 Winewood Boulevard, Building 2, Room 204, Tallahassee, Florida 32399.

JURISDICTION AND VENUE

10. This is an action for damages in excess of \$15,000.00, exclusive of interest, fees and costs.

11. The acts and/or omissions giving rise to at least two causes of action accrued in Sarasota County, Florida. Therefore, pursuant to Fla. Stat. § 47.011, jurisdiction and venue are appropriate in the Twelfth Judicial Circuit Court, in and for Sarasota County.

12. This action is brought pursuant to a Fla. Stat. Chapter 39, state common law tort actions, and 42 U.S.C. § 1983.

13. Timely and proper notice was served on the Department of Financial Services and the appropriate agencies, see, Exhibit A hereto.

14. This Court has jurisdiction over the 42 U.S.C. § 1983 claims herein, as state courts may exercise jurisdiction over § 1983 claims. *See Haywood v. Drown*, 556 U.S. 729, 731 (2009); *Patsy v. Board of Regents of Florida*, 457 U.S. 496, 506-07 (1982); *Maine v. Thiboutot*, 448 U.S. 1, 3 n.1 (1980).

BACKGROUND

15. In addition to Fla. R. Civ. P. 1.110 requirements that a Complaint contain a short, plain statement of the claims, Plaintiffs present the following factual details in accordance with the heightened pleading requirements for § 1983 actions:

16. In July of 2015, Maya, then 9 years old, suffered from a severe asthma attack and was admitted into JHACH. During her stay, Maya began exhibiting severe

pain manifestation and significant weakness. JHACH initially provided a potential diagnosis of steroid induced myopathy, as steroids had recently been administered by her treating physicians in significant doses.

17. After following a treatment regimen recommended by her pediatrician, consulting several other providers who were unable to determine the true cause of her condition, and following several months of debilitating, severe pain and increasing muscle weakness, Maya was referred to Dr. Anthony F. Kirkpatrick (“Dr. Kirkpatrick”), a leading expert in the treatment of Complex Regional Pain Syndrome (“CRPS”). On or about September 23, 2015, Dr. Kirkpatrick diagnosed Maya with CRPS. Subsequent to Dr. Kirkpatrick’s diagnosis, other experts and specialists in the fields of pain management, neurology, and psychiatry have confirmed Maya’s CRPS diagnosis. These experts and specialists include, but are not limited to, neurologist, Dr. Ashraf F. Hanna (“Dr. Hanna”); Dr. Pradeep Chopra (“Dr. Chopra”), a double board-certified Pain Management and CRPS specialist who serves as the Director of the Pain Management Center and Assistant Clinical Professor at Brown University Medical School in Rhode Island; Dr. Carl Barr (“Dr. Barr”), a pediatric neurologist; Dr. Duncan (a licensed psychologist); and neurologist, Dr. Allan Spiegel (“Dr. Spiegel”).

18. CRPS is a devastatingly painful and debilitating neuropathic condition. CRPS is generally caused by damage to or malfunction of the central nervous system and typically affects an individual’s extremities, causing excruciating pain, misinterpretation of otherwise everyday normal stimuli as painful, bone tenderness, stiffness, spasms, limited mobility, and abnormal movement of the affected limb(s), among other symptoms. The pain experienced by those suffering from CRPS is

described as burning, bone-crushing, shooting and stabbing. CRPS can also cause swelling, lesions, changes in skin color, dystonia, and changes in skin temperature. In fact, on December 7, 2015, Dr. Suzanne Jackman, a JHACH endocrinologist who saw Maya for adrenal insufficiency, noted that Maya had lesions manifesting at that time.

19. CRPS is treated in a variety of ways, including specialized physical therapy, psychotherapy, neural stimulation, sympathetic nerve blocks, spinal simulations and pain medications. Additionally, Ketamine infusion treatments are a recognized method of treating debilitating CRPS when other treatments have failed or have provided little relief. Ketamine infusion therapy has been clinically accepted in the treatment of CRPS as it effectively, temporarily blocks pain receptors, allowing an individual's body to reverse the sensitization process and eliminate pain associated with CRPS.

20. Following Maya's CRPS diagnosis, and upon the advice of Maya's CRPS specialists, Jack and Beata took Maya to a CRPS clinic in Mexico for a specialized Ketamine infusion therapy treatment, commonly known as a "Ketamine coma," not yet available in the United States. The treatment was effective, but follow-up booster Ketamine treatments were necessary thereafter and were administered first by Dr. Kirkpatrick, and later, by Dr. Hanna.

21. Due to these booster CRPS infusion therapies, in March of 2016, and upon the request of Maya's specialists, JHACH evaluated Maya, determined a port was medically appropriate for assisting her CRPS infusions, and then placed a port in Maya. Maya continued her Ketamine infusions, IVIG therapies and specialized physical therapies.

22. In May of 2016, a JHACH Pulmonologist sent a note to Maya's Pediatrician, Dr. Wassenaar, and noted the significant improvement in Maya's condition and pain levels after having undergone the above outlined therapies for her CRPS. However, as often happens with CRPS patients, Maya would suffer "flare-ups" of her symptoms.

23. In October of 2016, Maya began experiencing a reoccurrence of abdominal pain and vomiting. Upon the advice of Dr. Hanna, Maya's current treating CRPS physician at that time, on the morning of October 7, 2016, Jack Kowalski transported Maya to JHACH for treatment of these symptoms. Beata Kowalski later arrived at the hospital and explained Maya's condition as best she could to the doctors unfamiliar with Maya's condition and related the appropriate dosages of pain medications for a child with CRPS. The JHACH pain team called Dr. Hanna, who confirmed the CRPS diagnosis and Beata's recommended levels of pain medications. The JHACH pain team, however, decided against Dr. Hanna's recommendations.

24. During the course of their examination, certain JHACH personnel also indicated they wanted Maya to undergo invasive and potentially painful certain medical procedures for a CRPS patient, such as applying a blood pressure cuff and undergoing scans. Maya's parents informed JHACH that Maya's CRPS required certain precautions in performing these tests and examinations to reduce the amount of discomfort and pain for their daughter.

25. Upon information and belief, certain JHACH personnel became offended by the directions given by the mother (a registered IV Nurse) and father (a retired Chicago firefighter) and, based upon this conflict, immediately phoned in a report of

child abuse to the Child Abuse Hotline, claiming that Beata was interfering with Maya's treatment and that Beata "is believed to have mental issues." This latter claim was made without a psychological evaluation of Beata, without a consultation with her husband Jack to determine if this was an accurate assessment, and without a review of Beata's medical history or JHACH's own internal notes concerning JHACH's past positive interactions with Beata.

26. The Department of Children and Families' Investigator immediately reached out to Maya's specialist and confirmed that Maya did have CRPS and the mother's requests for higher doses of Ketamine administration was indeed necessary for and recommended for this child. Thus, the hotline call was immediately screened out that same day. JHACH was made aware that this investigation had closed.

27. The next day, October 8, 2016, Maya's parents became increasingly uncomfortable with the care and treatment Maya was receiving and advised JHACH that they wished to have Maya discharged so that she could be treated at a location with personnel familiar with treating CPRS.

28. Instead of complying with the families' wishes, JHACH staff contacted security and its Risk Management team, who jointly decided that any such discharge would be against medical advice and DCF would be contacted yet again. JHACH then called Dr. Sally Smith who provided information and advice.

29. On October 9, 2016, Maya's parents once again requested a transfer to Nemours, set up an appointment with Dr. Hanna, and notified JHACH that they wanted Maya to be discharged. This request was again denied and/or deflected and JHACH hid its true intentions from the Kowalski family.

30. Acting on the advice from Dr. Smith, JHACH called the DCF abuse hotline once again and reported inflated, unsubstantiated claims regarding medical child abuse of Maya by her mother Beata. In doing so, JHACH and Dr. Smith intentionally formed a plan and conspired in bad faith and with reckless disregard to Maya and her family to keep her at JHACH and under their control.

31. In this second call to the abuse hotline, JHACH raised up the abuse allegations, this time making the following false allegations:

- a. Mom had suspected mental issues;
- b. Mom was requesting Maya to be placed in a coma using pain medications;
- c. Mom got angry at Maya when she woke up and said she felt good and hungry;
- d. Mom was refusing Maya a donut when she got hungry;
- e. Mom was giving Maya unauthorized IV medications at home; and
- f. Maya was not actually in pain.

32. Based on the new report, a DCF Child Protection Investigator was once again assigned to investigate.

33. Despite having prior confirmation by Maya's treating physician of her CRPS diagnosis, Dr. Smith and JHACH knowingly and recklessly violated Jack and Beata's constitutional right to make medical decisions for their child by refusing to discharge Maya following repeated requests from Jack and Beata and by conspiring to abuse a process and legislative provisions designed to protect children from imminent harm.

34. Based upon misrepresentations and bad faith allegations to the Dependency Court, Maya was placed into protective custody on the afternoon of October 13, 2016, and a shelter petition was filed and entered on October 14, 2016, which designated JHACH as the shelter location for Maya. For at least three days prior to the entry of this Order, Maya was imprisoned at JHACH with no legal justification.

35. Upon learning that her child was to be taken from the family during the first court hearing on the matter, Beata suffered intense emotional grief and shock and fainted in the courtroom. She was transferred to a local ER for evaluation. Beata was diagnosed with Acute Stress Reaction and Grief reaction upon being accused of Munchausen by Proxy and having her child taken away. Records of this ER visit were obtained by the Defendants, placing them on notice of her condition.

36. During Maya's forced sheltering at JHACH, she; her brother, Kyle; her mother, Beata; and her father, Jack; suffered immensely at the hands of JHACH and its staff which, acting under Color of State Law, deprived the family and Maya of their constitutional rights. JHACH repeatedly violated court orders relating to Maya's family's visitation rights, and arbitrarily and maliciously interfered with Maya's right to correspond with friends and family and with Maya's right to practice her religion and visit with her Priest. The actions of JHACH and Dr. Smith were grotesque, as Maya was deprived of her constitutional rights; imprisoned by JHACH; battered by JHACH social worker Ms. Bedy; and isolated from her friends and family. Not surprisingly, Maya's mental and physical conditions deteriorated significantly over the course of the three months she was sheltered at JHACH.

37. Jack and Beata struggled heroically to provide the love and support they could to Maya within the confines of the sheltering at JHACH. Jack and Beata struggled to explain the capricious actions of the Defendants and provide Kyle with a sense of normality and allow him to visit and support his beloved sister. They struggled to reconcile with the abuse of state processes that was tearing apart their family after the previous year and a half of exhausting, financially-straining medical care for their beloved daughter, Maya. In doing so, they petitioned the court and sought review of the sheltering order on numerous occasions and, at each instance, continued to face JHACH's and Dr. Smith's unrelenting and knowingly false accusations and misrepresentations, resulting in prolonged separation from their suffering daughter and manifesting in Beata's depression, fainting in court, voicing of this depression and fatigue to JHACH and Dr. Smith, and ultimately, tragically, to Beata's suicide on January 7, 2017.

38. Following this tragedy, Maya was finally released to her grieving father's custody on January 13, 2017, a week after her mother's death.

39. Upon agreement by the dependency Court, on February 1, 2017, Court Appointed Dr. Tashawna Duncan's psychological evaluation of Maya's case was filed. Upon an exhaustive review of Maya's medical records and interviews with numerous treating physicians, educators and family members, Dr. Duncan found and concluded, in part, the following:

- a. "Maya has experienced excruciating pain resulting from an organic condition beyond her control (and beyond the control of her mother). Maya's parents sought and followed the advice of

experienced medical providers who are specialists in treating her diagnosed medical condition, CRPS.”

- b. “[Maya’s] parents sought treatment for the pain she was experiencing and requested that Ketamine be given in high doses. Hospital staff refused and, pointing to the ‘unusual’ treatment requested and the fact that Maya’s mother was a nurse, accused Maya’s mother of Factitious Disorder by Proxy.”
- c. “No less than three medical doctors have diagnosed [Maya’s] medical condition, and no less than three mental health professionals have evaluated Maya, none of whom have confirmed a diagnosis of Factitious Disorder.”
- d. “The hospital [JHACH] would only discharge Maya to another facility with a (false, unsupported and misleading) mental health diagnosis.”
- e. “An alternative diagnosis proposed by the hospital, Conversion Disorder, is similarly contraindicated.”
- f. Maya “also voiced significant frustration that her contact with her father and brother was limited and she was not permitted to see her priest, other family members, and friends. Maya added that the hospital staff even makes it difficult for her to contact her attorney.”
- g. “[P]rior to Maya being removed from the home there was no evidence that Maya’s mother, Beata, had ever suffered from mental health problems.”

40. On the same date Dr. Duncan's report was released, DCF filed a Notice of Voluntary Dismissal to terminate the original proceeding and requested an Order releasing Maya from Shelter Status. That request was granted on April 20, 2017.

41. Maya continues to receive treatment for her CRPS, but now without the care and support of her loving mother Beata, and she continues to receive mental health counseling to cope with the tragic loss of her mother.

42. The family remains in mortal fear of health care providers. They assume they will be taken. They do not seek medical care except upon the most extreme circumstances and only with the most trusted health care providers.

43. The actions taken by these Defendants were conducted in bad faith or malicious purpose and/or occurred in a manner exhibiting wanton and willful disregard of human rights and safety.

44. Plaintiffs specifically specify herein that they are not alleging any failure of Defendants to provide services agreed to under a Court ordered case plan (noting one was never even put in place).

STATE CAUSES OF ACTION

FALSE REPORTING OF CHILD ABUSE UNDER FLA. STAT. § 39.206 AGAINST JOHNS HOPKINS ALL CHILDREN'S HOSPITAL, INC., DR. SALLY SMITH, AND THE DEPARTMENT OF CHILDREN AND FAMILIES SOLELY AS CUSTODIAN OF THE RECORDS AT ISSUE

45. Plaintiffs re-aver Paragraphs 1-44.

46. Fla. Stat. § 39.206(10) creates a civil cause of action, and provides:

A PERSON WHO KNOWINGLY AND WILLFULLY MAKES A FALSE REPORT OF ABUSE, ABANDONMENT, OR NEGLECT OF A CHILD, OR A PERSON WHO COUNSELS ANOTHER TO MAKE A FALSE REPORT MAY BE CIVILLY LIABLE FOR DAMAGES SUFFERED, INCLUDING REASONABLE ATTORNEY FEES AND COSTS, AS A RESULT OF THE FILING OF THE FALSE REPORT.

47. On October 7, 2016, Jack Kowalski took his daughter Maya to JHACH to be admitted for worsening abdominal pain and decreased appetite. Per Defendant JHACH's records, on October 7, 2016, a social worker at JHACH "contacted abuse registry to report medical neglect."

48. DCF conducted its investigation, and after corroborating Maya's CRPS diagnosis and medication treatment plan, screened out the investigation. A note from JHACH's records confirms this, stating "[a] DCF report was generated . . . but was not accepted on 10/7/2016." The note continues, "MD reports to SW [social worker] that CPT [Child Protection Team] Dr. Sally Smith has been consulted . . .".

49. Two days later, on October 9, 2016, JHACH made another allegation of child abuse to DCF.

50. In connection with this second allegation of child abuse, JHACH knowingly and willfully made a false report.

51. The DCF in-take referral sheet from October 9, 2018, states:

"Recently, Mom brought Maya to the hospital. Mom stated she wanted Maya put in a coma and given pain medicine. Mom has taken Maya to several doctors in different states and countries. Maya woke up and said she is feeling good and hungry. Mom heard Maya and was angry. Maya said she wanted a donut. Mom is believed to have mental issues. There are concerns for Maya's safety and well-being. Mom is giving Maya's IV medication at home. It was stated that Maya is not in pain."

52. The note above from the in-take referral sheet directly contradicts a written report made by Dr. [redacted per agreement], which stated she was alone in the room when examining Maya. During this examination, Dr. [redacted per agreement] noted that Maya described being in pain, especially in her stomach, but she was hungry

and asked for a donut. The JHACH staff ordered Maya a peanut-butter and jelly sandwich instead.

53. The notes on the in-take referral sheet were false. Jack, not Beata, brought Maya to the hospital. Maya was in significant pain, as recorded by multiple providers at JHACH. Maya's mother, Beata, was not present when Maya requested a donut and thus didn't react in any manner (let alone angry), and most disturbingly, the report to DCF alleged that "Mom is believed to have mental issues," despite the lack of any evidence, consultation, or research. Beata was understandably distressed by the third day of her daughter's imprisonment by JHACH, with JHACH staff choosing to ignore Maya's CRPS diagnosis and converting the family's distress at the lack of proper treatment and desire to have Maya discharged, to a sign of mental and emotional instability.

54. JHACH made accusations without support and its internal records indicate a total lack of regard for the truth. As one example, the referral sheet above states that "Mom is giving Maya's IV medication at home," and implies that this included dangerous narcotics. It states this "fact" was of concern because she was a licensed, Registered IV Nurse. Notably, as JHACH would have discovered, had it reviewed its own records, Maya's thru-skin port allowing Maya's parents to administer her IV medications authorized by prescription *was installed by JHACH at JHACH in early 2016*. JHACH participated in the treatment program prescribed by Maya's neurologists, and then used Maya's parents' adherence to the prescribed treatment regimen as evidence of child abuse.

55. Further, certain JHACH providers [names redacted per agreement] claimed that Maya's parents demanded that Maya be placed into a "dangerous"

medically-induced coma. This allegation is knowingly false. The allegation is nonsensical, as both Jack and Beata knew that a medically-induced coma to alleviate CRPS symptoms was not even a treatment option at JHACH or in fact any Florida hospital. Beata's explanation of Maya's prior medical history of being placed into a medically induced coma by her neurologists (an accepted and effective treatment for CPRS), was instead a present and medically dangerous demand that *JHACH* place Maya in a coma.

56. As noted above, JHACH's internal notes indicate that Dr. Smith was consulted following DCF's initial (and from JHACH's view "unsuccessful") October 7th investigation and prior to JHACH's second allegation of child abuse to DCF. With the conspired plan between Smith and JHACH to create a totally false record, the second investigation was "successful" in that they took Maya from her family and thereafter for over three months exercised total control over her. The fraudulent plan or scheme initiated the chain of events leading to Maya's removal from her family, isolation, and destructive emotional and physical consequences. False reporting under Fla. Stat. § 39.206(10) imposes civil liability not only on those who make a false report, but also on anyone who *counsels another to make a false report, (i.e., Dr. Smith and JHACH doctors and nurses)*.

57. Dr. Smith counseled JHACH staff to embellish their allegations to ensure DCF's second investigation would result in the investigation being re-opened with the stated goal of removing Maya from her parents' custody. Dr. Smith's privileged position as a subcontractor of DCF allows awesome responsibility and power, and she used her inside knowledge, influence, and power to counsel JHACH in making a second reckless

and false report of child abuse. This directly and proximately resulted in Maya's isolation and mistreatment and Jack and Beata's subjection to months of dependency court proceedings, and unfathomable emotional and physical damage, ultimately directly leading to Beata's death.

58. Dr. Smith knew her claims of abuse were false from the start, but this was confirmed October 11, 2016. On that date, Dr. Smith called neurologist and CRPS specialist, Dr. Kirkpatrick to discuss Maya's diagnosis, care and treatment. He chronicled the phone call in a note stating that he confirmed Maya had generalized complex regional pain syndrome and that the concerns made by the doctor reporting potential abuse (that Maya would recoil from the doctor's touch but was fine if sheets touched her) was a consistent reaction for that disorder. He also *specifically cautioned* Dr. Smith against accusing the family of criminal conduct like Munchausen by Proxy. Dr. Smith completely ignored this information and continued on her quest to falsely report abuse allegations against Beata and Jack.

59. WHEREFORE, Plaintiffs demand judgment against defendant Johns Hopkins All Children's Hospital, Inc., and Dr. Sally M. Smith, M.D. as follows:

- a. For general damages of pain, suffering, loss of capacity to enjoy life, mental anguish, loss of consortium of mother and wife.
- b. For special damages, including expenses of hospitalization, medical care, and ongoing treatment, pain and suffering, and loss of economic consortium in the past and future.
- c. For Plaintiffs' attorneys' fees under F.S. 39.206.
- d. For such other relief as this Honorable Court deems proper.

FALSE IMPRISONMENT AGAINST JOHNS HOPKINS ALL
CHILDREN'S HOSPITAL, INC.

60. Plaintiffs re-aver Paragraphs 1-59, excepting paragraph 46-48 and state this is a cause of action for False Imprisonment and would further show;

61. Following Maya's admission to JHACH, a disagreement arose between Maya's parents, Jack and Beata, versus JHACH and its medical staff as to the proper course of treatment for Maya's previously diagnosed CRPS.

62. Following their initial disagreement with JHACH, and based upon the recommendation of other providers, Jack and Beata, who were vastly more familiar with their daughter's diagnosed CRPS, requested Maya's discharge to have her transferred to a facility that would willingly provide the proper care.

63. JHACH refused to discharge Maya, depriving Maya of her liberty and depriving Jack and Beata of their liberties in determining the proper facility to care for their sick child. During the time JHACH held Maya against her and her parents' wills and without legal justification, JHACH repeatedly requested DCF investigate Maya's case. DCF quickly confirmed Maya's CRPS diagnosis and Ketamine treatment plan and found no basis to suspect Jack or Beata of child abuse. DCF closed its first investigation and reported the closure to JHACH on October 7th. DCF informed JHACH that Maya had been diagnosed with CRPS by another treating physician with an expertise in CRPS and that her treating specialist(s) were unified in recommending the Ketamine infusion treatments.

64. Without legal authority, having already had their reported suspicions to DCF rejected and even after having been told the investigation was closed, JHACH continued to imprison Maya against her and her parents' will in a guarded hospital room

at the JHACH facility. JHACH refused to comply with Jack and Beata's repeated requests to have Maya returned. JHACH without foundation, provocation, factual basis or cause, imprisoned and tortured Maya, and took her away from the only family she had.

65. While Maya continued to be imprisoned, personnel at JHACH called Dr. Sally Smith to discuss the closed investigation, and Dr. Smith conspired with them to inflate the allegations to have the DCF investigation reopened.

66. Acting on this advice, JHACH made a second call to the DCF Child Abuse Hotline on October 9, 2016.

67. Maya remained in the custody of JHACH against her will and in violation of the statutory requirements listed under Florida Statute § 39.395 until October 13, 2016, at which time Maya was taken into Protective Custody by DCF based upon the inflated allegations of JHACH. At no time during Maya's admission did Jack and Beata pose an "imminent danger" to Maya, as they had cared for her for entire life without incident, they were previously known to JHACH doctors to be loving and caring parents, and they were not requesting a release, but instead, a transfer to another, more competent facility.

68. Given the absence of imminent danger to Maya, given DCF's initial investigation confirming Maya's CRPS diagnosis and prescribed treatments, and given JHACH's unfamiliarity with and lack of expertise concerning CRPS, JHACH's imprisonment of Maya was unreasonable and unwarranted.

69. From October 7, 2016, to October 13, 2016, JHACH acted without legal authority and held Maya against her will and her parents' will, imprisoning her in a hospital and placing her under the care of medical staff that refused to provide the

prescribed course of treatment. JHACH knew that there was no documented DCF hold in their records.

70. As a direct and proximate result, Maya, Kyle, Beata and Jack suffered the loss of each other's care, comfort and support; mental pain, anguish and embarrassment concerning false accusations of child abuse and the resulting separation; fear and internal family distress caused by Maya's absence and the capriciousness of JHACH's actions; the interruption of family events, holidays, routines, rituals and outings together; and Maya suffered physical pain from being held to a hospital bed without proper medical care, familial support, and assistance. Jack and Beata suffered special damages, Maya and Kyle have suffered the loss of their parents' care comfort and support during the period of tribulation for the family while Maya was wrongfully and intentionally imprisoned and from the belief instilled in them by Dr. Smith, Dr. Smith's employer Suncoast, JHACH, and Catherine Bedy that Maya may never be returned to them or that their ability to see and interact with each other will be severely curtailed and totally controlled by the State. Maya was subjected to extremely painful physical therapy and unnecessary psychological "care" and manipulation.

71. WHEREFORE, Plaintiffs demand judgment against Defendant, Johns Hopkins All Children's Hospital, Inc., as follows:

- a. For general damages afore-pled;
- b. For special damages, including bodily injury, physical suffering, physical inconvenience and discomfort, loss of time, economic losses related to Plaintiffs' employment, expenses incurred due to the imprisonment, including travel expenses to and from the

hospital, mental suffering from embarrassment, humiliation, deprivation of liberty, and disgrace and injury to the Plaintiffs' feelings and reputations;

- c. Attorneys' fees and legal costs to the extent allowed under law;
- d. And for such other relief as this Honorable Court deems proper.

ABUSE OF PROCESS AGAINST JOHNS HOPKINS ALL CHILDREN'S HOSPITAL, INC., SUNCOAST CENTER, INC., AND DR. SALLY SMITH

72. Plaintiffs re-aver Paragraphs 1-72.

73. Due to these actions by the Defendants, Maya, Jack, and Beata were unlawfully prohibited from deciding upon the best course of care for Maya's CRPS, a basic constitutional right.

74. Based upon this perversion of the otherwise legitimate process provided for in Fla. Stat. § 39.395: Maya was sheltered at JHACH; her condition worsened as JHACH and Dr. Smith's opinions were unfounded and contra-indicated; Maya was isolated from her family; Kyle, Beata, and Jack suffered severe emotional distress at the loss of their sister and daughter; and ultimately, Kyle, Maya, and Jack lost their loving mother and dedicated wife.

75. The actions of JHACH, Suncoast Center and Dr. Sally Smith were a willful and intentional misuse of process for a wrongful and unlawful object and/or collateral purpose. These Defendants profited significantly from their unjustified actions, to the extreme detriment of the Kowalski family.

76. WHEREFORE, Plaintiffs demand judgment against Defendants, Johns Hopkins All Children's Hospital, Inc., Suncoast Center, Inc., and Dr. Sally M. Smith, M.D., as follows:

- a. For general damages;
- b. For special damages, including bodily injury, physical suffering, physical inconvenience and discomfort, loss of time, economic losses related to Plaintiffs' employment, expenses incurred due to the imprisonment, including travel expenses to and from the hospital, mental suffering from embarrassment, humiliation, deprivation of liberty, and disgrace and injury to the Plaintiffs' feelings and reputations;
- c. And for such other relief as this Honorable Court deems proper.

**CIVIL CONSPIRACY AGAINST DR. SALLY SMITH, JOHNS HOPKINS ALL
CHILDREN'S HOSPITAL, INC., AND
SUNCOAST CENTER, INC.**

77. Plaintiffs re-aver Paragraphs 1-77.

78. JHACH, Suncoast, as employer of Dr. Sally Smith, and Dr. Sally Smith conspired to do an unlawful act – subjecting Beata, Jack and Maya Kowalski to an investigation and sheltering process that was unfounded and knowingly based upon inflated and false allegations and ulterior motives. In the alternative, the Defendants conspired to do a lawful act by unlawful means, having availed themselves of the DCF investigative process and having not received the answer they desired, they developed a plan to convince DCF to reopen its investigation based upon fraudulent allegations.

79. Dr. Smith was even warned by CRPS specialist, Dr. Kirkpatrick, to not pursue her claims of Munchausen's by Proxy because Maya truly did suffer from CRPS and the parents were properly seeking treatment. JHACH worked with Dr. Smith and her employer, Suncoast Center, to continue this theory of abuse to keep Maya away from her

family and to profit from their scheme by billing for their actions. These billing practices were, in and of themselves, unlawful in nature.

80. JHACH, Suncoast, and Dr. Smith's actions demonstrated incredible callousness towards Maya's, Jack's, and Beata's predicament – a family doing their best to cope with a devastating CRPS diagnosis – and demonstrated willful and wanton disregard for the consequences to Maya, Kyle, Beata, and Jack.

81. The damage caused by JHACH, Suncoast, and Dr. Smith's perverted, abusive actions is unfathomable. Maya was confined to a hospital that refused to treat her CRPS, she was subjected to further abuse at the hands of JHACH doctors and staff, she was isolated from her friends and family, and she suffered from the loss of support and love needed to cope with her debilitating pain. Kyle, Jack, and Beata struggled to reconcile their new lives without their beloved sister and daughter, they continued to work through the legal system to reclaim their rights, and tragically and finally, JHACH, Suncoast, and Dr. Smith's disregard for Maya's care and Beata and Jack's parental rights, caused Beata's suicide.

82. WHEREFORE, Plaintiffs demand judgment against Defendant, Johns Hopkins All Children's Hospital, Inc., as follows:

- a. For general damages
- b. For special damages, including bodily injury, physical suffering, physical inconvenience and discomfort, loss of time, economic losses related to Plaintiffs' employment, expenses incurred due to the conspiracy, including travel expenses to and from the hospital and attorneys' fees, mental suffering from embarrassment,

humiliation, deprivation of liberty, and disgrace and injury to the
Plaintiffs' feelings and reputations

c. And for such other relief as this Honorable Court deems proper.

**BATTERY AGAINST JOHNS HOPKINS ALL CHILDREN'S
HOSPITAL, INC., AND CATHERINE BEDY**

83. Plaintiffs re-aver Paragraphs 1-83.

84. During Maya's admission and subsequent imprisonment at JHACH, licensed social worker and JHACH employee, Ms. Catherine Bedy, battered Maya by engaging in harmful and/or offensive contact. The intentional contact with Maya included, but is not limited to, the touching of Maya around the face and body through the actions of unwanted pats, stroking, caresses and kisses.

85. This unwanted touching was indicative of a normalization process, with Ms. Bedy attempting to substitute herself for Beata as a mother figure, and/or preparing Maya for future, more intrusive physical contact. In fact, Ms. Bedy directly told Maya that this was the reason for the unwanted touching.

86. On more than one occasion, Ms. Bedy sat Maya on her lap with only a hospital gown between Maya and Ms. Bedy's body. On more than one occasion, Ms. Bedy slapped Maya on her legs with full knowledge that Maya suffered from CRPS and experienced extreme pain in her legs. On several occasions, Ms. Bedy held and caressed Maya's hand in an inappropriate manner. And, on at least one occasion, Ms. Bedy kissed Maya against her will.

87. Based upon her direct supervision of Maya, Maya's medical records, nurses' notes, and other hospital records, Ms. Bedy either knew or should have known that Maya despised JHACH and its staff for holding her prisoner and refusing to treat her

CRPS. Ms. Bedy therefore knew that her advances and the above-referenced contact was unwanted, harmful, offensive, and frankly, terrifying to Maya.

88. Furthermore, on each and every occasion, the above-referenced contact was unwanted, offensive, and harmful to Maya. The above-referenced contact was neither made known to, nor consented to, by Maya's parents, Jack and Beata.

89. None of the aforementioned actions were authorized, required or justified due to medical necessity or by Fla. Stat. Chapter 39 or any other law, statute, regulation. None of the afore-mentioned actions were requested by Maya. To this day, Maya is still traumatized by the actions of Ms. Bedy.

90. As a direct and proximate result of Ms. Bedy's actions, Maya was injured in that she suffered and continues to suffer depression, anxiety, and mental and emotional suffering. Beata and Jack suffered emotional anguish knowing that their beloved daughter was being mistreated and contending with unwanted advances and painful contact, leading ultimately Beata's suicide, and in Jack's case, continuing depression and anxiety over the injury and violence perpetrated on his daughter and the helplessness of not being able to care for her and support her as she struggled with CRPS and was isolated from her family. Maya's brother, Kyle, lost the comfort and support of his older sister, and remains traumatized and emotionally scarred. Further, Kyle lost the comfort and support of his loving mother, who killed herself to "free" his sister from the confines of JHACH. These injuries and damages will continue for the duration of the lives of Maya, Kyle, and Jack.

91. WHEREFORE, Plaintiffs demand judgment against Defendant, Johns Hopkins All Children's Hospital, Inc., as follows:

- a. For general damages
- b. For special damages, including travel expenses for travel to and from the hospital, attorneys' fees and legal costs, and
- c. And for such other relief as this Honorable Court deems proper.

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS AGAINST JOHNS HOPKINS ALL CHILDREN'S HOSPITAL, INC., DR. SALLY SMITH, AND SUNCOAST CENTER, INC., ON BEHALF OF THE ESTATE OF BEATA

92. Plaintiffs re-aver paragraphs 1-92.

93. During Maya's sheltering at JHACH, Maya's CRPS deteriorated, her lesions reappeared, and she suffered physical injury.

94. Upon learning that her daughter would be sheltered at JHACH and taken away from the family with a no contact order, Beata collapsed on the courtroom floor and was immediately transferred to a local hospital for evaluation. Beata was then diagnosed with Acute Stress Reaction and Grief reaction upon being accused of Munchausen by Proxy and having her child taken away.

95. Further, after witnessing Beata faint after Maya was removed from her custody, which Defendants knew indicated Beata's suicide risk, the Defendants, acting both in concert and separately, engaged in a systematic effort to intimidate, ridicule, and demean Beata, eventually pushing her over the brink. The Defendants abhorrent actions included: berating Beata in person, in public, and over the phone; accusing Beata of abusing her beloved, suffering daughter; telling Beata she had very little chance of freeing her daughter and she would likely not live with her again; refusing even the simplest supervised contact between Beata and Maya – forbidding or impeding correspondence through notes, letters, phone calls, or Facetime calls; publicly alleging to

others, including her husband, Jack, and Beata's brother, that Beata was mentally unstable and unfit to raise Maya or Kyle; and continually reinforcing in Beata's mind that she was likely to never see her little girl again and that the daughter she had loved and cared for over the past decade was now in state custody.

96. The Defendants' actions directly and proximately caused physical injury to Maya, severe humiliation, emotional pain and suffering.

97. WHEREFORE, Plaintiffs demand judgment against Defendants, Johns Hopkins All Children's Hospital, Inc., Dr. Sally Smith, and Suncoast Center, Inc., for Negligent Infliction of Emotional Distress as follows:

- a. For general damages;
- b. For special damages, including bodily injury, physical suffering, physical inconvenience and discomfort, mental suffering from embarrassment, humiliation, deprivation of liberty, and disgrace and injury to the Plaintiffs' feelings and reputations;
- c. And for such other relief as this Honorable Court deems proper.

MALICIOUS PROSECUTION AGAINST DR. SALLY SMITH, SUNCOAST CENTER, INC., AND JOHNS HOPKINS ALL CHILDREN'S HOSPITAL, INC.

98. Plaintiffs re-aver paragraphs 1-44.

99. Based upon JHACH's second report to DCF, and/or on the advice and subsequent reporting provided by Dr. Sally Smith, a judicial dependency proceeding was commenced and continued for more than six months.

100. These Defendants were the legal cause of this proceeding.

101. Defendants were the sole legal cause of the initiation of the proceeding, which lacked probable cause and was eventually terminated in favor of the Plaintiffs upon Order of the Court after a voluntary dismissal request by DCF.

102. There was legal malice on the part of the Defendants due to the want of probable cause to initiate these proceedings.

103. As a direct and proximate result, the Plaintiffs suffered unfathomable and irreparable mental, emotional and psychological damages, and will continue to suffer such loss, injury and damages in the future.

104. WHEREFORE, Plaintiffs demand judgment against Defendants, Johns Hopkins All Children's Hospital, Inc., Suncoast Center, Inc., and Dr. Sally M. Smith, M.D., as follows:

- a. For general damages;
- b. For special damages, including bodily injury, physical suffering, physical inconvenience and discomfort, loss of time, economic losses related to Plaintiffs' employment, expenses incurred due to the malicious prosecution, including travel expenses to and from the hospital, mental suffering from embarrassment, humiliation, deprivation of liberty, and disgrace and injury to the Plaintiffs' feelings and reputations;
- c. And for such other relief as this Honorable Court deems proper.

§ 1983 CLAIMS

42 U.S.C. § 1983 VIOLATIONS AGAINST JOHNS HOPKINS ALL CHILDREN'S HOSPITAL, INC., AND SALLY M. SMITH, M.D.

105. Plaintiffs re-aver paragraphs 1-44.

106. Title 42 U.S.C. § 1983 imposes liability on anyone who, under color of state law, deprives a person "of any rights, privileges, or immunities secured by the Constitution and laws." As set forth below (1) defendants deprived Plaintiffs of a right secured under the Constitution or federal law, and (2) such deprivation occurred under color of state law. The Defendants were each performing a function that is traditionally the exclusive prerogative of the State. The Defendants established policies and/or customs of conduct that resulted in children, like Maya, to enter and remain in shelter care for wrongful purposes and for longer than necessary by law, and each Defendant prioritized the financial interest of their corporation or individual practice.

107. Following JHACH's initial report to DCF, DCF corroborated Maya's CRPS diagnosis and closed the investigation initiated based upon JHACH's report of suspected medical child abuse. JHACH was informed of this decision and, despite repeated requests from Jack and Beata Kowalski, refused to release Maya into her parent's care. At all times subsequent to the closing of the initial investigation, JHACH, both alone and at times in concert with Dr. Sally Smith and Suncoast Center, acted under color of state law to deprive Maya and her family of their Constitutional rights.

108. JHACH consulted with Smith and Suncoast following DCF's closed investigation and, based upon information and belief, Smith advised JHACH to again report its allegations of medical child abuse to require DCF to open a second investigation. JHACH's own internal risk management procedures created a custom and/or policy to make false claims to DCF if any parent attempted to undergo a treatment plan or discharge from the facility against their medical advice. Suncoast Center and Sally Smith likewise had a custom and/or policy to make allegations of abuse to enter

children into state custody without proper investigations and with willful refusal to address all contra-indicated evidence.

109. JHACH further acted under color of state law while Maya was sheltered at JHACH from October 14, 2016, to approximately January 13, 2017. Admittedly, Maya was sheltered at JHACH by court order, but as further described below, JHACH at times usurped the Court's orders and took actions beyond the Court-ordered actions to deprive Maya and her family of their rights, and otherwise acting illegally to deprive Maya and her family of their Constitutional rights.

110. By and through their authority presumed under color of state law, JHACH, Suncoast, and Smith systematically violated Maya Kowalski's Constitutional Rights under the First, Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States and specifically:

VIOLATION OF FIRST AMENDMENT

111. Plaintiffs re-aver paragraphs 1-44.

112. Plaintiffs allege that Defendants violated Maya's Freedom of Religion. Despite JHACH having a Patient and Family Rights and Responsibilities Policy stating that the policy of the hospital was "[t]o practice your cultural values and spiritual beliefs, as long as they do not interfere with the well-being of others and are within the limits of hospital policy and law," JHACH refused to respect the religious beliefs of Plaintiffs Maya, Beata and Jack Kowalski on more than one occasion.

113. JHACH knew of Maya's religious beliefs through Maya's admission documents showing that she was Roman Catholic and also by virtue of the Crucifix, Rosary Beads, Bible, and prayers that Maya requested to be with her at the hospital.

These religious artifacts were removed from and/or not permitted to be in her hospital room, without explanation. At the time her Cross, Bible and Rosary Beads were removed, Maya was told that she could not see her Roman Catholic priest.

114. On October 25, 2016, a JHACH representative queried Maya in a threatening and disrespectful manner as to why she needed or should have her prayer cards, prayer book, bible, rosary and holy water, each of which her father Jack had brought to the hospital for the child to have. Plaintiffs informed JHACH that the Kowalskis practiced Roman Catholicism and such items were routinely utilized in their religion. Despite the candid explanation to his disrespectful inquisition, JHACH demanded that the Kowalskis remove all religious artifacts and prevented, through repeated threats and physical acts of removal, Maya from keeping any “religious” items in her possession or in her hospital room.

115. Maya was denied the right to see a Priest or partake of Holy Communion until November 13, 2016.

116. Despite Maya’s repeated requests for communion and to maintain possession of her religious artifacts, JHACH denied Maya her First Amendment rights until November 14, 2016, when the dependency Court ordered the hospital to cease and desist from its denial of Maya’s Constitutional rights. On November 14, 2016, the dependence Court entered the Order On Shelter Review As To Visitation By Father, Sibling and Others, which specifically provided:

- a. **“D.2. Cooperation Required of Facility** The facility shall make efforts to allow a priest to have regular contact with Maya. She shall also be permitted to have in her possession religious artifacts that do not interfere in her rehabilitation.”

117. As a direct and proximate result of these actions, JHACH violated the Plaintiffs' First Amendment right to Freedom of Religion and, as a consequence, the Kowalskis were injured in that they suffered mental anguish, fear, loss of comfort and support and physical manifestations of their anxiety including loss of appetite, lethargy, pain and discomfort.

118. WHEREFORE, Plaintiffs demand judgment against Defendants, Johns Hopkins All Children's Hospital, Inc., and Sally Smith, M.D., as follows:

- a. For general damages;
- b. For special damages, including mental and emotional pain and suffering;
- c. For attorneys' fees;
- d. And for such other relief as this Honorable Court deems proper.

VIOLATION OF FOURTH AMENDMENT

119. Plaintiffs re-aver paragraphs 1-44.

120. Plaintiffs next allege that Defendants violated their Fourth Amendment rights against the illegal seizure of their daughter Maya.

121. The Fourth Amendment, incorporated by the Fourteenth Amendment, provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, . . ." U.S. Const., amend. IV. "[A] person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave."

122. The Defendants conspired and agreed to misuse the force of law and the threat of force of law and physical force in the person of armed guards and security personnel, nurses, doctors, locked and barred doors, security devices, security cameras and surveillance to hold and thereafter fail to release Maya from JHACH's premises.

123. Following DCF's closure of its initial investigation based upon JHACH's unfounded and reckless allegations of medical child abuse, JHACH, through force and intimidation and acting under color of state law, refused to discharge Maya and release her into her parents' care despite repeated, strenuous requests. At times, JHACH intentionally deceived the Kowalski family into believing they were working on a discharge and/or transfer of Maya, but behind the scenes, were secretly and intentionally preventing her discharge and/or transfer.

124. In addition to those allegations previously referenced, Plaintiffs allege that Defendants did not have probable cause, warrant, or exigent circumstances prior to removing Maya from her parents' custody and kidnapping their daughter.

125. The conduct at issue constitutes an unlawful search or seizure in violation of the Fourth and Fourteenth Amendments to the Constitution of the United States.

126. As a direct and proximate result of these actions, Defendants violated the Plaintiffs' Fourth Amendment Rights and, as a consequence, the Plaintiffs were injured in that they lost their freedom, suffered mental anguish, fear, loss of comfort and support and physical manifestations of their anxiety including loss of appetite, lethargy, pain, and discomfort.

127. WHEREFORE, Plaintiffs demand judgment against Defendants, Johns Hopkins All Children's Hospital, Inc., and Sally Smith, M.D., as follows:

- a. For general damages;
- b. For special damages, including mental and emotional pain and suffering, loss of time and expenses associated with the Dependency Court proceedings;
- c. For attorneys' fees;
- d. And for such other relief as this Honorable Court deems proper.

VIOLATION OF FIFTH AMENDMENT

128. Plaintiffs re-aver paragraphs 1-44.

129. Plaintiffs next allege that Defendants violated their Fifth Amendment rights by robbing Plaintiffs of their liberty without due process of law.

130. Again, DCF closed its initial investigation based upon JHACH's unfounded and reckless allegations of medical child abuse. This first investigation was closed on or about October 7, 2016.

131. After learning of DCF's closed investigation and its corroboration of Maya's CRPS diagnosis, JHACH unilaterally and wrongfully refused to discharge Maya and release her into her parents' care.

132. JHACH deprived Plaintiffs of their liberty without due process of law up and until the time of the Court's initial Order sheltering Maya at JHACH's premises.

133. Maya was not in danger of imminent harm from her parents at any time, as would have been required under state law.

134. As a direct and proximate result of these actions, Defendants violated the Plaintiffs' Fifth Amendment Rights and as a consequence the Plaintiffs were injured in that they lost their freedom, suffered mental anguish, fear, loss of comfort and support

and physical manifestations of their anxiety including loss of appetite, lethargy, pain and discomfort.

135. WHEREFORE, Plaintiffs demand judgment against Defendants, Johns Hopkins All Children's Hospital, Inc., and Sally Smith, M.D., as follows:

- a. For general damages;
- b. For special damages, including mental and emotional pain and suffering;
- c. For attorneys' fees;
- d. And for such other relief as this Honorable Court deems proper.

VIOLATION OF SIXTH AMENDMENT

136. Plaintiffs re-aver paragraphs 1-44.

137. During Maya's imprisonment and detention at JHACH, Maya, on numerous occasions, requested the right to speak with and confer with her and her family's chosen counsel.

138. On several occasions, based upon information and belief, JHACH declined Maya the right to counsel by refusing to allow her to contact or receive phone calls or otherwise communicate with her attorneys.

139. As a direct and proximate result of Defendants' violation of Plaintiffs' Sixth Amendment rights, the Plaintiffs incurred mental pain and anguish, loss of familial relationships, loss of privacy and resulting humiliation, the loss of their time and pleasure of family being together and the total loss of the care, custody, support and counsel of mother and wife, Beata Kowalski.

VIOLATION OF FOURTEENTH AMENDMENT

140. Plaintiffs re-aver paragraphs 1-44.

141. In addition to the other § 1983 action pled herein, Plaintiffs allege that Defendants removed Maya from her parents' custody in violation of the Plaintiffs' Fourteenth Amendment due process rights.

142. Additionally, Plaintiffs allege that Defendants violated their Fourteenth Amendment rights by denying Plaintiffs the right to determine Maya's medical care, and further, that JHACH continued to deny Maya medical care to be provided per the Court's order.

143. The Supreme Court has held that parents have a constitutionally protected liberty interest in the care, custody and management of their children, including the right to decide the course of medical treatment. It has been the well-established law of the United States and the State of Florida that where there is a divergence in opinion regarding the recommended medical treatment of a minor, it is the parents who have the right to decide on the best course of treatment for their child.

144. Based on the experience and stated opinions of the Plaintiffs' chosen medical providers, including the opinions of three neurologists with specializations in pain management, Maya and her parents chose a course of treatment for her CRPS appropriate for patients suffering from CRPS.

145. Upon being admitted to JHACH for constipation on October 7, 2016, the Defendants illegally overrode the Plaintiffs' decision regarding Maya's care and violated the Plaintiffs' right to decide on the course of Maya's treatment, and further, turned the well-considered opinions of Maya's treating physicians on their head by using the

recommended course of treatment as evidence to support unfounded and reckless allegations of medical child abuse against Beata.

146. The Defendants, none of whom were experts in CRPS or Factitious Disorder by Proxy, made a diagnosis of Munchhausen's-by-Proxy and later, Factitious Disorder by Proxy, without properly eliminating CRPS as the proper diagnosis, by failing to properly consult with Maya's treating physicians or thoroughly review Maya's medical history.

147. The Defendants were not and did not have on staff any specialist to properly review Maya's case. Despite this, the Defendants failed to consult with Maya's treating physicians prior to discounting her CRPS diagnosis. Dr. Sally Smith admitted under oath that she was not an expert in CRPS and learned about it through some Google searches.

148. Despite the unassailable law that it was the Kowalskis who had the right to choose the best treatment for their daughter, the Defendants instead "overruled" the Kowalskis and Maya's treating physicians and pronounced the CRPS diagnosis a fraud.

149. As a result of the imposition of the Defendants' will over the Plaintiffs' expressed desires and Constitutionally-protected rights, Maya was treated for psychological conditions and her CRPS treatments were discontinued under Defendants' oversight.

150. Maya's parents repeatedly requested that Maya be discharged from JHACH. The Defendants would not release Maya without an admission from Maya or her parents that her condition was in fact psychological and not CRPS.

151. The Defendants subjected Maya to repeated inquiries with the goal of convincing her that her outside treating physicians were wrong about the CRPS diagnosis, that her mother had and was abusing her, and that her illness was purely psychological. This questioning occurred outside of the presence of Maya's parents, her doctors, and her counsel.

152. Additionally, the Defendants systematically attempted to convince Jack and Beata of several contradictory theories: that Maya's illness was psychiatric and should be properly diagnosed as factitious disorder by Proxy and/or conversion disorder; and/or that Maya was a victim of medical child abuse and Beata was intentionally harming her daughter for personal gain and gratification.

153. By doing so, Defendants violated Maya's Fourteenth Amendment right to be safe from an unreasonable risk of physical harm while in state custody.

154. The Defendants imprisoned Maya without evidence that Maya was at risk of imminent harm at the hands of her parents and without a Court Order.

155. Subsequent to Defendants' conspiracy to convince DCF to open a second investigation into Defendants' unfounded and reckless allegations of medical child abuse, JHACH and Smith grossly misrepresented Maya's medical history to obtain a court order for removal of Maya from her parents and also to continue the removal in excess of 90 days.

156. During Maya's imprisonment and sheltering at JHACH, Maya suffered greatly as she was denied the intimacy and emotional support of her parents and 7 year old brother.

157. During dependency court proceedings regarding Maya's sheltering status and her family's visitation rights, after an unfavorable ruling, Beata lost consciousness, which indicated the extreme duress, emotional damage, and anxiety that Beata suffered as a result of Defendants' reckless actions, and should have triggered an awareness in the Defendants, given their medical knowledge and purported psychiatric expertise, that Beata was at risk for suicide.

158. Following Defendants' initial unfounded and reckless allegations and as required by the Court, the Plaintiffs produced extensive reports - provided by Dr. Kirkpatrick, Dr. Hanna, Dr. Barr, and Dr. Wassenaar, and Dr. Spiegel - corroborating that Maya suffered from CRPS. Once in possession of this extensive medical documentation, the Defendants lacked any reasonable basis to continue to believe that Jack or Beata abused Maya or that she was in imminent danger of abuse while in their custody.

159. Moreover, the fallacy of Defendants' allegations became painfully clear as Maya was sheltered for three months at JHACH and was denied any interaction with her mother Beata, and limited interactions with her father Jack and brother Kyle. Away from their purported influence and abuse, Maya's condition worsened and she manifested objective symptoms of CRPS, including but not limited to, lesions and dystonia.

160. Given the weight of the evidence before them and the counter-productivity of Defendants' course of treatment as Maya continued to suffer, any reasonable defendant would have abandoned its unfounded and reckless diagnoses of Munchausen by Proxy/Factitious Disorder by Proxy and/or Conversion Disorder.

161. After two months of Maya's separation from her family and sheltering at JHACH, when it had become clear that Maya's condition had not improved in spite of

Defendants' treatment regimen for psychiatric issues as opposed to CRPS, the Defendants stubbornly and recklessly maintained their determined efforts to control Maya and tear apart her family.

162. Defendants further violated Plaintiffs' Fourteenth Amendment rights through continuous threats to Maya and both parents that they would remain separated indefinitely.

163. Notably, on January 6, 2017, during a Court hearing, the Kowalski family requested permission for Maya to give her mother a supervised hug, having been separated from her mother for 84 days. Upon the insistence and testimony of these Defendants, this request was denied, resulting in mental anguish so harmful and extreme that it led to the death of Beata by suicide within 36 hours.

164. The Defendants repeatedly and deliberately provided knowingly false information to the Dependency Court in order to deny Maya her liberty and to deprive Maya's parents of custody and control over their daughter.

165. The Defendants knowingly violated the Plaintiffs' Fourteenth Amendment rights to security in their home and person, to individual and family privacy and to associate as a family.

166. As a direct and proximate result of these actions, Defendants violated the Plaintiffs' Fourteenth Amendment rights and as a consequence the Plaintiffs were injured in that they lost their liberty and freedom, suffered mental anguish, fear, loss of comfort and support and physical manifestations of their anxiety including loss of appetite, lethargy, pain and discomfort, loss of consortium, and the permanent loss of love and support through the tragic loss of Beata.

167. WHEREFORE, Plaintiffs demand judgment against Defendants, Johns Hopkins All Children's Hospital, Inc., and Sally Smith, M.D., as follows:

- a. For general damages;
- b. For special damages, including mental and emotional pain and suffering;
- c. For attorneys' fees;
- d. And for such other relief as this Honorable Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues so triable.

Respectfully submitted this 5th day of October, 2018.

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